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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/761,153	01/17/2001	David Swisa	00/21263	3699

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EXAMINER

MENDOZA, MICHAEL G

ART UNIT PAPER NUMBER

3731

DATE MAILED: 08/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/761,153

Applicant(s)

SWISA, DAVID

Examiner

Michael G. Mendoza

Art Unit

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 June 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments, see pg 2, lines 3-6, filed 28 June 2004, with respect to the rejection(s) of claim(s) 1 and 13-15 under 35 U.S.C. 102(b) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of O'Brien 5320107.

Claim Rejections - 35 USC § 102

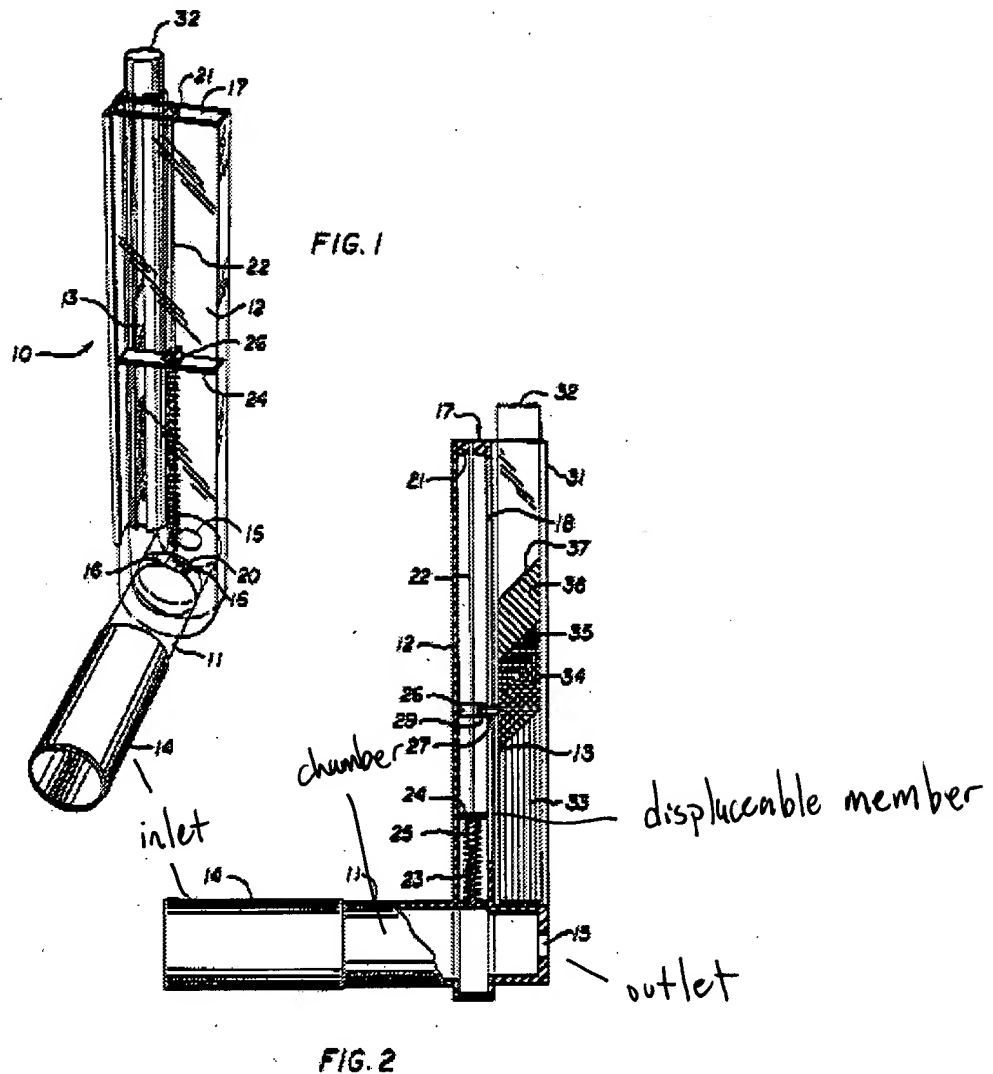
2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 5, and 13-15 are rejected under 35 U.S.C. 102(b) as being anticipated by O'Brien 5320107.

4. O'Brien teaches a device for detecting the flow of gas through at least one opening in an object, the device comprising: an inlet; a chamber having an interior; an outlet open to ambient pressure and configured so as to restrict flow to a greater degree than the inlet; a pressure displaceable member having an inner face exposed to and contiguous with the interior of the chamber and an outer face exposed to the ambient pressure; the member is displaceable as a result of a differential in respective pressures of the chamber interior and the ambient pressure; and wherein the outlet is configured so as to restrict flow therethrough to a greater degree than the flow is restricted by the inlet.



Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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6. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Brien in view of Hamilton 5520167.

7. As to claim 2, O'Brien teaches the device of claim 1. O'Brien fails to teach an attaching member.

8. Hamilton teaches a device with a common attaching member 10 for allowing the attachment of different masks. Therefore it would have been obvious to one of ordinary skill in the art to use the attachment member of Hamilton to attach different size masks to allow for use with a child or an adult (col. 1, lines 52-53).

9. Claims 6-8 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Brien.

10. As to claim 6, O'Brien teaches the device of claim 1. O'Brien fails to specifically teach wherein the pressure displaceable member is removably coupled to a visual indicator of displacement of the pressure displaceable member or a casing removably attached to the device. However it would have been obvious to one of ordinary skill in the art to make the pressure displaceable member or the casing removable for maintenance such as cleaning or repair.

11. As to claims 7 and 8, O'Brien teaches the device of claim 6 wherein the visual indicator comprises a movable element and a graduated scale 30 for indicating an extent of the movement thereof; and wherein the movable element is tensionably connected to the pressure displaceable member, such as to have a normal position at zero tension and wherein increasing displacement causes increasing tension against the displacement (col. 3, lines 12-27).

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12. Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Brien in view of Aylsworth et al. 5911219.

13. O'Brien teaches the device of claim 1. O'Brien fails to teach where the pressure displaceable member is operatively associated with a sensor.

14. Aylsworth et al. teaches a device with a common sensor for communicating with the user or care giver (col. 2, lines 36-37). Therefore it would have been obvious to one of ordinary skill in the art to modify the device of O'Brien to include the sensor of Aylsworth et al. to measure flow and store data associated with the sensor (col. 3, lines 18-33).

15. O'Brien/Aylsworth teaches the device of claim 9, wherein the indication is any one of a group comprising visible, audible and tactile indications (col. 7, lines 11-13); and wherein the indication is transmittable to a remote receptor (col. 7, lines 38-44).

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Contacts

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael G. Mendoza whose telephone number is (703) 305-3285. The examiner can normally be reached on Mon.-Fri. 8:00 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Dawson can be reached on (703) 308-4304. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9306 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.



MM
August 13, 2004


GLENN K. DAWSON
PRIMARY EXAMINER